

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

JOSE MORALES-CAMACHO,

**Plaintiff**

v.

COMMONWEALTH OF PUERTO RICO;  
CORRECTIONS ADMINISTRATION  
GLORIA E. ORTIZ MARTINEZ,  
PRESIDENT, COMMONWEALTH OF  
PUERTO RICO PAROLE COMMISSION  
(JUNTA DE LIBERTAD BAJO  
PALABRA); COMMUNITY ACTION  
PROGRAM

CIVIL 09-1658 (FAB) (JA)

## Defendants

## OPINION AND ORDER

Plaintiff inmate Roberto Morales-Montáñez has filed a pro-se complaint pursuant to 42 U.S.C. § 1983, claiming that his civil rights were violated by the defendants. He claims that he has served his minimum sentence, having served three years and ten months of a five year and six months sentence originally imposed. He alleges that the Parole Commission was required to acquire jurisdiction in his case on December 10, 2008 and entitle him to a hearing before the same. The Commission actually acquired jurisdiction over his case on February 27, 2009, allegedly resulting in a violation of ten agreements or stipulations of the case of Efraín Montero-Torres v. Hernández-Colón, Civil No. 75-0828 (PG). The Commission was supposed to reach a decision one way or the other within 50 days and did not. Plaintiff also states that the defendants have

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3 been negligent in their undertaking and that because of such negligence he and  
4 his family have suffered emotional damages in the amount of \$100,000. Plaintiff  
5 seeks that the court direct the Parole Commission to comply with its duties and  
6 grant him parole.

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8 I. PRO-SE PLAINTIFF

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10 Since plaintiff is proceeding pro se, I construe the pleadings, however  
11 inartful, liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (following  
12 Estelle v. Gamble, 429 U.S. 97, 106 (1976) and Haines v. Kerner, 404 U.S. 519,  
13 520-21 (1972)). "The policy behind affording pro se plaintiffs liberal  
14 interpretation is that if they present sufficient facts, the court may intuit the  
15 correct cause of action, even if it was imperfectly pled." Ahmed v. Rosenblatt,  
16 118 F.3d 886, 890 (1st Cir. 1997); see Castro v. United States, 540 U.S. 375, 381  
17 (2003) (noting that courts may construe pro se pleadings so as to avoid  
18 inappropriately stringent rules and unnecessary dismissals of claims). All well-  
19 pleaded factual averments made by a pro se plaintiff and reasonable inferences  
20 drawn therefrom must be accepted as true. Aulson v. Blanchard, 83 F.3d 1, 3  
21 (1st Cir. 1996). The complaint requires only "a short and plain statement of the  
22 claim showing that the pleader is entitled to relief." Erickson v. Pardus, 551 U.S.  
23 at 93 (quoting Fed. R. Civ. P. 8(a)(2)); see Gargano v. Liberty Intern.  
24 Underwriters, Inc., 572 F.3d 45, 48-49 (1<sup>st</sup> Cir. 2009). That the complaint allege  
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4 a conceivable entitlement of relief is insufficient. See Ashcroft v. Iqbal, 129 S. Ct.  
 5 1937, 1950-51 (2009). "[A] plaintiff's obligation to provide the grounds of his  
 6 entitlement to relief requires more than labels and conclusions, and a formulaic  
 7 recitation of the elements of a cause of action will not do." Damon v. Moore, 520  
 8 F.3d 98, 102-03 (1st Cir. 2008), cert. denied, 129 S. Ct. 175 (2008) (quoting Bell  
 9 Atl. Corp. v. Twombly, 550 U.S. 544, 555(2007)).

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 11 II. CIVIL RIGHTS VIOLATION

12 Section 1983 creates a cause of action against those who, acting under color  
 13 of state law, violate federal constitutional or statutory law. See 42 U.S.C. §  
 14 1983<sup>1</sup>; Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds  
 15 by Daniels v. Williams, 474 U.S. 327, 330-31 (1986); Wilson v. Town of Mendon,  
 16 294 F.3d 1, 6 (1st Cir. 2002); see Sanchez Rodriguez v. Departamento de  
 17 Corrección y Rehabilitación, 537 F. Supp. 2d 295, 296 n.1 (D.P.R. 2008). In  
 18 order for a plaintiff to be held liable under section 1983, his or her conduct must  
 19 have caused the alleged constitutional or statutory deprivation. See Monell v.  
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 23 <sup>1</sup> 42 U.S.C. § 1983 provides that:

24 Every person who, under color of any statute, ordinance, regulation,  
 25 custom, or usage, of any State or Territory or the District of  
 26 Columbia, subjects, or causes to be subjected, any citizen of the  
 27 United States or other person within the jurisdiction thereof to the  
 28 deprivation of any rights, privileges, or immunities secured by the  
 Constitution and laws, shall be liable to the party injured in an action  
 at law . . . .

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3 Dep't of Soc. Servs. of City New York, 436 U.S. 658, 692 (1978); Sanchez v.  
4 Pereira Castillo, 2009 WL 4936397, No. 08-1748 at 35 (1st Cir. Dec. 23, 2009);  
5 Soto v. Flores, 103 F.3d 1056, 1061-62 (1st Cir. 1997). Because Morales-  
6 Camacho's claims allege violations of federal constitutional law effected by state  
7 actors, his suit properly arises under section 1983.  
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9       This matter is before the court on motion to dismiss filed by the defendants  
10 on September 1, 2009. (Docket No. 15). The defendants argue that the  
11 complaint fails to state a cognizable claim under the United States Constitution,  
12 since there is no constitutional right to be granted parole, or to be conditionally  
13 released before the expiration of a valid sentence. The defendants also state  
14 that the complaint has been rendered moot, since the petitioner has been notified,  
15 on August 4, 2009, of the decision to deny him the privilege of parole. They also  
16 argue that the Eleventh Amendment to the United States Constitution bars the  
17 recovery of money damages against them in their official capacity. Plaintiff was  
18 granted until December 31, 2009 to respond to the motion to dismiss in view of  
19 the difficulties he might encounter to perfect a timely response due to his status  
20 as a prisoner. He has failed to file such a response.  
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22       Federal Rule of Civil Procedure 12(b)(6) allows for the dismissal of an action  
23 for "failure to state a claim upon which relief can be granted[.]" Fed. R. Civ. P.  
24 12(b)(6). Dismissal under the rule is appropriate where the plaintiff has failed to  
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3 show its claim is at least "plausible." Bell Atl. Corp. v. Twombly, 550 U.S. at 557.  
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5 In ruling upon a Federal Rule of Civil Procedure 12(b)(6) motion, the court must  
6 accept as true all the well-pleaded factual allegations in the complaint and  
7 construe all reasonable inferences in favor of the plaintiff. Perry v. New England  
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Bus. Serv., Inc., 347 F.3d 343, 344 (1st Cir. 2003) (citing Beddall v. State St.  
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Bank & Trust Co., 137 F.3d 12, 16 (1st Cir. 1998)). The complaint will be  
10 dismissed if it "fails to set forth 'factual allegations, either direct or inferential,  
11 respecting each material element necessary to sustain recovery under some  
12 actionable legal theory.'" Gagliardi v. Sullivan, 513 F.3d 301, 305 (1st Cir. 2008)  
13 (quoting Centro Médico del Turabo, Inc. v. Feliciano de Melecio, 406 F.3d 1, 6 (1st  
14 Cir. 2005)). More exactly, "[t]he complaint must allege 'a plausible entitlement  
15 to relief' in order to survive a motion to dismiss." Thomas v. Rhode Island, 542  
16 F.3d 944, 948 (1st Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. at  
17 559.).  
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### 20 III. SOVEREIGN IMMUNITY

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22 The Eleventh Amendment states:

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26 The Judicial power of the United States shall not be  
27 construed to extend to any suit in law or equity,  
28 commenced or prosecuted against one of the United  
States by Citizens of another State or by Citizens, or by  
Citizens or Subjects of any Foreign State.

27 U.S. Const. amend. XI.  
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3       The Eleventh Amendment applies not only to states but also to state  
4 agencies acting as "alter egos" to the state. See Ainsworth Aristocrat Int'l Party  
5 v. Tourism Co. of the Commonwealth of P.R., 818 F.2d 1034, 1036 n.2 (1st Cir.  
6 1987) (quoting Mount Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274,  
7 280 (1977)). Similarly, the Eleventh Amendment extends not only to state  
8 agencies acting as alter egos to the state but also to state employees exercising  
9 their official duties. "[A] suit against a state official in his or her official capacity  
10 is not a suit against the official but rather is a suit against the official's office. As  
11 such, it is no different from a suit against the State itself." Will v. Mich. Dep't of  
12 State Police, 491 U.S. 58, 71 (1989); Cosme-Perez v. Mun. of Juana Diaz, 585 F.  
13 Supp. 2d 229, 236 (D.P.R. 2008). The moving defendants argue that at all times  
14 the individuals named in the complaint were acting within the scope of their  
15 employment, in their official capacities, and therefore are immune from judgment  
16 in the present suit.

17       "Puerto Rico is treated as a state for the purposes of a §1983 analysis.  
18 Costa Urena, et al. v. Segarra, 2009 WL 4913261, No. 07-2739 at 3, n.1 (1<sup>st</sup> Cir.  
19 Dec. 22, 2009), citing Perez-Acevedo v. Rivero-Cubano, 520 F.3d 26, 29 n.6 (1<sup>st</sup>  
20 Cir. 2008). For the purposes of the Eleventh Amendment, Puerto Rico is  
21 afforded the same rights as a state and therefore any private suit against the  
22 Commonwealth of Puerto Rico is barred. See e.g. Jusino-Mercado v.  
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3 Commonwealth of P.R., 214 F.3d 34, 37 (1st Cir. 2000); Ezratty v.  
4 Commonwealth of P.R., 648 F.2d 770, 776 n.7 (1st Cir. 1981) (explicitly stating  
5 that Eleventh Amendment immunity applies to Puerto Rico).

7 The Puerto Rico government can be sued if it has consented to be sued by  
8 statute or if the right has been waived by Congress. Ramírez v. P.R. Fire Serv.,  
9 715 F.2d 694, 697 (1st Cir. 1983). Consequently, "[t]he eleventh amendment  
10 bars the recovery of damages in a federal court against the Commonwealth of  
11 Puerto Rico, see e.g. Ramírez v. Puerto Rico Fire Service, 715 F.2d 694, 697 (1st  
12 Cir. 1983), and, by the same token, it bars the recovery of damages in *official*  
13 *capacity* suits brought against Puerto Rico officials where recovery will come from  
14 the public fisc." Culebras Enter. Corp. v. Rivera Ríos, 813 F.2d 506, 516 (1st Cir.  
15 1987) (citing Kentucky v. Graham, 473 U.S. 159, 165-66 (1985)).

18 While the affirmative defense of sovereign immunity is available to state  
19 actors, because of the disposition of this case, I do not enter into a sovereign  
20 immunity analysis, especially since neither injunctive relief is feasible, nor are  
21 damages appropriate.

23 IV. CASE OR CONTROVERSY

24 Petitioner has presented a clear statement as to why he believes he is  
25 entitled to relief based upon a violation of his civil rights. However, in a very  
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2 seminal respect, his action has been rendered moot by the action of the Parole  
3 Commission.

4 In order for the court to adjudicate a matter, Article III of the United States  
5 Constitution requires that there be a case or controversy between the parties.

6 Allen v. Wright, 468 U.S. 737, 750 (1984); see U.S. Const. art III, §2. The  
7 concept of ripeness has its roots in this case or controversy requirement, as well  
8 as in prudential considerations. Mangual v. Rotger-Sabat, 317F.3d 45, 59 (1st

9 Cir. 1999). The federal ripeness doctrine involves a question of "when" an issue  
10 may be heard by the court. Federacion de Maestros de P.R. v. Acevedo-Vila, 545

11 F. Supp. 2d 219, 224 (D.P.R. 2008). For a case to be ripe there has to be a  
12 "substantial controversy, between parties having adverse legal interests, of  
13 sufficient immediacy and reality to warrant the issuance of a declaratory

14 judgment." Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 506 (1972). "The  
15 ripeness doctrine seeks 'to prevent the courts, through avoidance of premature  
16 adjudication, from entangling themselves in abstract disagreements.'" McInnis-

17 Misenor v. Me. Med. Ctr., 319 F.3d 63, 70 (1st Cir. 2003) (quoting Abbott Labs.  
18 v. Gardner, 387 U.S. 136, 148 (1967)).

23 Determination of ripeness involves a two-pronged inquiry. McInnis-Misenor,  
24 319 F.3d at 70. First, the court must determine whether the issue is fit for  
25 review. Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 535 (1st Cir.  
26 1995). The critical question in the fitness analysis is "whether the claim involves  
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2 uncertain and contingent events that may not occur as anticipated or may not  
3 occur at all." Ernst & Young, 45 F.3d at 536 (quoting Mass. Ass'n of Afro Am.  
4 Police, Inc. v. Boston Police Dep't, 973 F.2d 18, 20 (1<sup>st</sup> Cir. 1992)). The second  
5 prong of the inquiry refers to the hardship the parties may suffer if the court  
6 withholds consideration of the controversy.  
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8 Any request for injunctive relief has been rendered moot based upon the  
9 consideration of plaintiff's request for release by the Parole Commission. The  
10 Parole Commission issued a resolution noting that plaintiff had been classified in  
11 medium custody since March 6, 2007 and he was serving time for a violent crime  
12 and has a criminal record for a drug offense.  
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14 The second prong of the inquiry refers to the hardship the parties may  
15 suffer if the court withholds consideration of the controversy. Plaintiff is again  
16 eligible for review before the Parole Commission in April 2010. At that time he  
17 may or may not be paroled, just as any other prisoner who is passed over by the  
18 parole board and appears at the next scheduled hearing. He therefore suffers no  
19 greater hardship than any prisoner awaiting review by the Parole Commission.  
20 Therefore the only remaining matter is if petitioner is entitled to damages from  
21 the defendants in their individual capacities. In order to be liable, there must be  
22 an identifiable issue to be tried leading to a possible award of damages. The  
23 issue does not exist since he is not entitled to damages for emotional distress and  
24 mental anguish based upon a late decision by the Parole Commission which  
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2 renders moot his petition. Indeed he refers to the negligent inaction of the  
3 defendants which resulted in the late notification. However, any purported  
4 negligence cause of action to be gleaned from the complaint would suffer  
5 dismissal because of the early dismissal of the federal claim.

7 V. CONCLUSION

8 In conclusion, plaintiff has failed to state a claim upon which relief can be  
9 granted. Again, there is no federal constitutional right to parole. There is no  
10 violation of his civil rights. Plaintiff has not shown that he has a plausible  
11 entitlement to relief. Sanchez v. Pereira-Castillo, No. 08-1748 at 13, citing  
12 Ashcroft v. Iqbal, 129 S. Ct. at 1949.

13 Accordingly, the complaint is hereby dismissed in its entirety 1) for failing  
14 to state a claim upon which relief can be granted, 2) based upon plaintiff's failure  
15 to identify a plausible violation of his constitutional rights, 3) because the primary  
16 relief sought has been provided, and 4) because the Eleventh Amendment bars  
17 the recovery of money damages against the defendants in their official capacity.

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19 The Clerk is directed to enter judgment accordingly.

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21 At San Juan, Puerto Rico, this 4<sup>th</sup> day of January, 2010.

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24 S/ JUSTO ARENAS  
25 Chief United States Magistrate Judge  
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